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5 Attorneys for Plaintiff

6
7 **UNITED STATES DISTRICT COURT**
8
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 FREDERICK D. JAMES

11 Plaintiff,

12 v.

13 UNUM LIFE INSURANCE
14 COMPANY OF AMERICA,

15 Defendant.

CASE NO.

**COMPLAINT FOR DAMAGES
UNDER THE EMPLOYEE
RETIREMENT INCOME
SECURITY ACT**

[29 U.S.C. Section 1132]

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18 Plaintiff, FREDERICK D. JAMES (hereinafter referred to as "Plaintiff"),
19 complains of Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA
20 (hereinafter referred to as "UNUM") as follows:

21 **JURISDICTION AND VENUE**

22
23 1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§1331,
24 1337 and 29 U.S.C. §1132(a)(1), (e), (t), and (g), of the Employee Retirement
25 Income Security Act of 1974, 29 U.S.C. §1101 . et. seq. (hereafter "ERISA") as it
26 involves a claim by Plaintiff for disability benefits under an employee benefit plan,
27 regulated and governed under ERISA. Jurisdiction is predicated under these code
28 sections as well as 28 U.S.C. §1331 as this action involves a federal question.

1 2. The events or omissions giving rise to Plaintiff's claim occurred in this
2 judicial district, thus venue is proper here pursuant to 28 U.S.C. §1391(b)(2).

3 3. The ERISA statute at 29 U.S.C. §1133, in accordance with
4 Regulations of the Secretary of Labor, provides a mechanism for internal appeal of
5 benefit denials. Those avenues of appeal have been exhausted.

6 4. Plaintiff exhausted the appeal process on or about January 14, 2022, at
7 which time he was informed that UNUM had denied Plaintiff's appeal of the denial
8 of his long term disability benefits.

9 **GENERAL ALLEGATIONS**

10 5. Plaintiff is informed and believes and thereon alleges that the plan is
11 an employee welfare benefit plan established and maintained by Plaintiff's
12 employer, ENTERPRISE RENT-A-CAR (hereinafter referred to as
13 "ENTERPRISE"), to provide its employees with group long term disability
14 ("LTD") benefits, and to pay a portion of a covered employee's income during a
15 period of disability.

16 6. Plaintiff is an individual citizen and resident of the State of California,
17 Los Angeles County, residing within the Central District of the State of California.

18 7. On information and belief, UNUM insures the Plan and is
19 contractually obligated to pay benefits for claims covered and approved through the
20 Plan.

21 **FACTUAL AND LEGAL BACKGROUND**

22 8. At all times relevant hereto, Plaintiff, currently age 45, was employed
23 by ENTERPRISE as an Automobile Rental Sales Agent.

24 9. Plaintiff's job at ENTERPRISE was medium and required lifting in
25 excess of 10 pounds, with frequent standing, stooping, reaching downward,
26 handling and fingering. In addition, Plaintiff's job required a high degree of
27 concentration and energy.

28 10. Plaintiff's policy with UNUM defines disability as follows:

1 “You are disabled when UNUM determines that:

2 You are limited from performing the material and substantial duties of your
3 regular occupation due to sickness or injury; and you have a 20% or more loss in
4 your indexed monthly earnings due to the same sickness or injury.”

5 11. Plaintiff first became disabled on or about September 8, 2016 due to a
6 multitude of medical conditions including fibromyalgia, hypertension, migraines
7 and anxiety. Plaintiff then returned to work on or about November 29, 2016.
8 Plaintiff was subsequently out of work on or about February 7, 2017 through May
9 16, 2017. Plaintiff again was out of work on or about October 6, 2017 through June
10 20, 2018. Eventually, Plaintiff became permanently disabled on or about August
11 21, 2018 due to some of the same conditions he was previously experiencing,
12 however, after August 21, 2018 Plaintiff developed other non-related symptoms
13 causing him to be continuously disabled to the present date. Although Plaintiff had
14 some of these medical conditions existing prior to the last disability date of August
15 21, 2018, he did not receive medical treatment or diagnosis for other conditions that
16 he was experiencing during this current disability period to the present date
17 including, but not limited to, sharp chronic pain in the legs, knees and back limiting
18 his ability to sit, stand or walk for long periods. Plaintiff has experienced cognitive
19 dysfunction which limits his attention span, short term memory loss, focus and
20 ability to process information and formulate thoughts. Plaintiff also suffers from
21 irregular sleep patterns, chronic fatigue, eye strain and damaged optical nerves.
22 Plaintiff’s current conditions have been diagnosed by his attending physicians who
23 have indicated that Plaintiff is unable to perform the regular duties of his regular
24 occupation as an automobile rental sales agent.

25 12. UNUM denied Plaintiff LTD benefits on or about January 5, 2019.

26 13. Plaintiff appealed the decision on July 24, 2019 and again on
27 September 13, 2019 and May 6, 2020, and UNUM then informed him on or about
28 January 14, 2022 that his appeal was denied. Thus, Plaintiff has fully exhausted his

1 administrative remedies.

2 14. Plaintiff contends that the standard of review is de novo due to the
3 operation of Insurance Code Section 10110.6 (effective January 1, 2012) which
4 states:

5 “If a policy, contract, certificate, or agreement offered,
6 issued, delivered, or renewed, whether or not in
7 California, that provides or funds life insurance or
8 disability insurance coverage for any California resident
9 contains a provision that reserves discretionary authority
10 to the insurer, or an agent of the insurer, to determine
11 eligibility for benefits or coverage, to interpret the terms
12 of the policy, contract, certificate, or agreement, or to
13 provide standards of interpretation or review that are
14 inconsistent with the laws of this state, that provision is
15 void and unenforceable.”

16 15. As a direct and proximate result of Defendant’s wrongful denial of
17 LTD benefits, Plaintiff contends that Defendant has breached the contract by not
18 paying monthly benefits, payable at the approximate rate of \$4,800.00 from
19 November 19, 2018 until the present and continuing less applicable offsets.

20 16. As a further direct and proximate result of the denial of benefits, and
21 due to Defendant’s unreasonable denial, Plaintiff had to engage the services of
22 attorneys to assist him in recovering benefits due him, under the terms of the LTD
23 Plan. Accordingly, Plaintiff is further entitled to reasonable attorney’s fees in an
24 amount according to proof pursuant to 29 U.S.C. Section 1132(g)(1).

25 **WHEREFORE**, Plaintiff demands judgment against Defendants, and each
26 of them, as follows:

27 1. Damages for breach of contract pursuant to 29 U.S.C. Section 15
28 1132(a)(1)(B), for Long-Term Disability benefits payable at the approximate rate of

1 \$4,800.00 per month from November 19, 2018 to the present and continuing less
2 applicable offsets.

3 2. Interest on said amounts in accordance with law;

4 3. For reasonable attorney's fees and costs in a sum according to proof,
5 pursuant to 29 U.S.C. Section 1132(g)(1).

6 5. For any further relief that the court deems reasonable and just.

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8 DATED: November 3, 2022 LAW OFFICES OF BERNARD R. SCHWAM

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10 By: /s/ Bernard R. Schwam
11 BERNARD R. SCHWAM
12 ATTORNEY FOR PLAINTIFF
13 FREDERICK D. JAMES
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